

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-1418

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,
Plaintiff-Appellee,

- against -

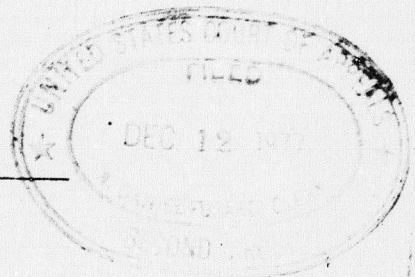
DAVID CAMPBELL and MICHAEL
TARTT,

Defendants-Appellants.
-----X

Docket No.
77-1418

On Appeal from a Conviction After
Trial in the United States
District Court for the Southern
District of New York

BRIEF FOR APPELLANT
DAVID CAMPBELL



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Plaintiff-Appellee,
- against -
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77-1418

QUESTION PRESENTED

WHETHER THE DISTRICT COURT ERRED IN DENYING
APPELLANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE
IN THAT THE ARRESTING AGENTS CONDUCTED A
WARRANTLESS SEARCH OF THE APPELLANT'S APARTMENT

STATEMENT PURSUANT TO RULE 28(A)(3):

PRELIMINARY STATEMENT

Appellant David Campbell appeals from his conviction after a jury trial of the crime of conspiracy (18 U.S.C. 541). The trial occurred in July, 1977, before the Honorable Lawrence W. Pierce, United States District Judge in the Southern District of New York. Campbell was acquitted of the substantive offense with which he was charged, armed bank robbery (18 U.S.C. 2113(a)).

STATEMENT OF FACTS

A. The Government's Case

On April 4, 1977, at approximately 10:30 a.m., three black men entered the Chemical Bank at 543 Cathedral Parkway, near Broadway at 110th Street, and announced a holdup. Two of the men were armed, one with a sawed-off shotgun and one with a pistol. While the shotgun bandit controlled the floor and manager's area of the bank and the pistol-wielder the area near the teller's counter, the unarmed bandit vaulted the teller's counter and collected money. The three fled the bank with approximately \$19,000 in cash.

Approximately ten minutes later, Wallace Hall -- a government witness at trial -- was apprehended by local police on the platform of the nearby subway station, close to the .32 calibre pistol he had discarded. Hall was brought back to the bank and was identified as one of the three holdup men. The other two men made good their escape.

Hall, in custody of local authorities, made a full confession to Detective John Stein of the New York City Police at approximately 11:30 a.m., one hour after

his arrest.¹ Hall named "Mike" and "Dave", who lived in the same building as he at 579 Academy Street, as being his accomplices. He told Stein that Mike lived in Apartment 4-B and that Dave lived in the ground-floor Apartment E, which had a blue carpet at its entrance and which opened onto Post Avenue, the intersection at which the building sat.

Seven hours later, at approximately 6:20 p.m., a joint force of local police and F.B.I. agents arrested appellants Tarrt and Campbell in their respective apartments at 571-9 Academy Street. The following materials were taken from Campbell's apartment: a sawed-off shotgun and shells, taken from a locked nightstand in the bedroom; approximately \$11,000 in cash, including "bait money, or serial-number-recorded bills from the Chemical Bank, found in a closed valise in a closet located in an alcove off the living room; a brown cloth coat allegedly matching one worn by the shotgun bandit, taken by Special Agent Marlen Vogt from an open living room closet; and a white wool cap, taken from the top of a nightstand in the bedroom,

1 Judge Pierce's decision denying the motion to suppress was in error as to when Hall made his first confession to Detective Stein.

which cap allegedly matched that worn by one of the bank robbers. Later, a personal search of Campbell revealed two .32 calibre pistol shells, said to fit the pistol carried by Wallace Hall during the robbery.

The trial evidence against Campbell consisted, then, of the physical evidence taken from his apartment and of the testimony of Wallace Hall, the accomplice, who told the jury that Campbell wielded the shotgun during the holdup, had participated in conversations planning the holdup during the weeks prior to April 4, and had assisted in procuring the shotgun from one Junior Hamilton, a relative of Campbell's.

Hall admitted lying to agents in several regards. First, he originally told agents that the robbery was planned the morning of the holdup, but testified that a series of conversations to plan the robbery took place over a period of weeks. Hall told agents that the bank holdup men travelled to the scene of the crime by subway, then shifted his story to one about going to the bank by car, and, shortly before trial, named a fourth party as the driver. And Hall admitted lying during trial testimony about the neighborhood candystore and its role as a local numbers parlor.

B. The Defense Case

Campbell testified in his own defense, denying participation in the robbery or its planning. He admitted being acquainted with Wallace Hall and acknowledged having seen the shotgun several weeks prior to April 4, when Junior Hamilton was showing the gun to several people in Campbell's apartment. Campbell told the jury that he did not know how any of the contraband items came to be in his apartment.

Three alibi witnesses placed Campbell in his neighborhood at about the hour of the holdup. These witnesses were Mr. Fred Schmahl, a white "retired senior citizen" who was a neighbor, and Mr. and Mrs. Leroy Caldwell. Campbell also presented evidence that co-defendant Tartt's wife identified the white wool cap taken from Campbell's apartment and allegedly worn by one of the bank robbers as belonging to her daughter.

C. Hearing on Motion to Suppress

A week-long hearing on a motion to suppress physical evidence traced the activities of local police and F.B.I. agents through the day of April 4, 1977, from the time Wallace Hall first confessed to Detective

Stein at 11:30 a.m., until the arrests were made early that evening. The federal role, of course, became paramount as the day progressed, immediately upon learning the names of addresses of Mike and Dave, local authorities communicated what they had learned to federal agents. Special Agent Joseph Martinolich, the case agent in charge of the mixed team of federal and local police, was aware of the robbery prior to noon (H.T. 146).² Assigned as case agent at 12:30 to one o'clock, he was told the basic facts by the Bureau coordinator (H.T. 148). Martinolich was aware in the early afternoon of the names and addresses of the two suspects (H.T. 150-1).

Approximately two hours after his case assignment, at about three p.m., Martinolich met Detective Stein in an upper Manhattan restaurant, along with other local police and F.B.I. agents.³

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- 2 References to pages of the transcript of testimony at the hearing on the motion to suppress will contain the initials H.T. for hearing transcript, and the page number. References to trial transcript pages will be made as T.T., and the page number, if used.
 - 3 All told, approximately 7 - 8 police and F.B.I. agents passed through the restaurant between the hours of three and four p.m. While Martinolich remembered being there for 15 or 20 minutes, Special Agent Higgins remembered staying there for about an hour (H.T. 36-7). Part of that time, [continued on following page]

Leaving the restaurant, Martinolich drove to F.B.I. headquarters on 69th Street, continued on to Long Island City where surveillance photographs were being developed, and returned to Bureau headquarters to speak with Wallace Hall, whom he interviewed at approximately 4 p.m. (H.T. 159). His primary purpose in interviewing Hall again was to clarify a question regarding the address of the building, which was 571-9 Academy Street, and to question Hall about the blue rug said to be in front of Campbell's ground floor apartment (H.T. 163). After speaking with Hall, Martinolich drove to the 34th Police Precinct for a meeting of the approximately 12 men who were to assist in making the arrests of Mike and Dave (H.T. 180). From there he placed a phone call to Barry Kingham, Assistant Chief of the Criminal Division, and received oral authorization to proceed with the arrests (H.T. 182-3). These warrantless arrests occurred at approximately 6:20 p.m.

D. The Campbell Arrest

The Campbell arrest was effected by a team led by Special Agent Higgins, which team included Special

[continued from preceding page]

according to Higgins, was taken up with the case, but the main purpose was to assure that Detective Stein and other police could eat. Higgins himself may have had some coffee (H.T. 45).

Agent Carbone, Special Agent Marlen Vogt, and Detective Miele. Higgins, Carbone, and Vogt were the first to enter Campbell's apartment.⁴ They knocked on the door; a man came to the door. The agents asked the man if his name were Dave. Upon receiving an affirmative response, they placed him under arrest.

Special Agent Higgins held Campbell on the foyer wall while Special Agent Marlen Vogt, seeing movement in the living room, went into the living room and found three black men, whom he secured by requiring them to stand against opposite walls of the living room.⁵

4 When the team first entered the apartment, Detective Miele waited outside the apartment on the street, watching for contraband to be thrown from the window (H.T. 420). Special Agent Vogt testified that he was "behind Miele" when he entered the apartment (H.T. 70), although it seems clear from Miele's own testimony that that was not possible. Thus, the implication in Judge Pierce's findings that Miele was part of the group that knocked on the door of Campbell's apartment seems erroneous (Appendix); Miele did not enter the apartment until the premises was completely secure (H.T. 420). He was told to come in by walkie-talkie (H.T. 421).

Vogt recalled that Higgins and Miele secured Campbell while he entered the living room alone and stopped the three men waiting there (H.T. 72-4). It was while he was frisking the third man, on the opposite wall, that he heard someone call out [continued on following page]

5 See Campbell's Hearing Exhibit 6, a photograph of the living room, upon which Agent Vogt marked where he placed the three men.

Two of the men Vogt stood against one wall, palms touching the wall, while Vogt conducted the third across the room to the opposite wall. While securing this third man, Vogt found a coat in the open closet of the living room and seized it. This coat was said to match the one worn by the shotgun bandit (H.T. 74).

Vogt specifically recalled being the only one to take control of the living room, because the other agents were taking care of Campbell (H.T. 95). Vogt remembered the moment when the money was found, because he heard the agent and the case detective (Miele) say "something" at the time he was searching the one individual, near the closet (H.T. 101).⁶

[continued from preceding page]

about finding money (H.T. 101).

Whether Miele waited in the street or entered with the party and secured Campbell, Vogt was clearly first into the living room and he secured the three men on opposite walls; there could not have been four men in the alcove, as Miele recalled.

- 6 Vogt's recollections become significant by virtue of its contrast to Miele's testimony, since the latter recalled that three or four black men were huddled in the alcove in the living room when he found the money (H.T. 421). Appellant contends that Miele's version is highly improbable, in view of the clear fact that Vogt secured the men in different parts of the living room before Miele entered. Appellant contends that Miele was, at best, in error; at worst, his unlikely story seems cut to fit as best it can, the requirements of Chimel v. California, infra. It is difficult to image this experienced lawman securing a valise without making any effort to secure the four men standing next to it.

1. The Putative Consent to Search

In the meantime, Higgins was supervising Campbell's arrest and search. He testified that he told Campbell that there was information that he had been involved, and that there was evidence and proceeds of the bank robbery in that apartment at that time, and that Campbell "told us to go ahead and search, that there was nothing there" (H.T. 18).

Campbell's version was different from that of the agent. Evidence at the hearing offered graphic proof that Campbell, who completed ninth grade in North Carolina and is presently 38 years of age (H.T. 663-666), is almost completely illiterate. Evidence revealed that Higgins, along with Martinolich and other agents of the F.B.I., are familiar with and have used the Bureau "consent to search" form (H.T. 242). The forms were not used on April 4. At times, according to the uncontested evidence, agents will write out a form for the consensor to sign (H.T. 243). No such form was used in this arrest or to secure consent for this search (H.T. 263-4).

Moreover, Martinolich -- the supervising case agent -- acknowledged that it was normal F.B.I. procedure for agents to proceed to an arrest site prepared to

elicit an oral consent from whomever will give it (H.T. 262), and that such was the case in this matter.

Campbell testified that after he was arrested, one of the agents, whom he recalled as the one who took his coat, Special Agent Vogt, came over to him and said:

"You don't mind if we search your apartment. You don't have nothing to hide, do you?"

"I said, 'You're going to do it anyhow, so it don't matter.'" (H.T. 609)

And Special Agent Higgins testified about the opening of the nightstand in Campbell's bedroom. After finding a white wool cap atop the nightstand, Higgins saw that the nightstand was locked. He asked Campbell for a key to open the lock; Campbell had no key but one of the other men (later identified as Robert C. Jones), secured in the living room by other agents, furnished the key at the appellant's suggestion (H.T. 617-8).⁷ Once again, Campbell's testimony indicates a submission to the real

7 The issue of who had keys to Campbell's apartment and nightstand was a crucial fact question at trial. Several people, including co-defendant Tartt, were shown to have access to Campbell's apartment even if he was not there; Robert Jones possessing the key to the nightstand is mute evidence of the kind of access Campbell allowed his friends.

authority of the F.B.I. -- especially in view of his statement that the agent threatened to "shoot the lock off" unless Campbell opened the nightstand (H.T. 615).⁸

2. The Finding of the Money

Nearly \$11,000 in cash, some of which were "bait bills", or serial-number-recorded bills, were recovered from a black valise (Government's Hearing Exhibit 7) by Detective Miele of the New York City Police Department. Miele, in a remarkable stroke of fortune, entered the room, immediately seized the valise, and found the money (H.T. 421). See, footnote 6, supra.

Miele testified that he was originally assigned to stand at the corner of Academy Street and Post Avenue to assure that no contraband was thrown from the windows (H.T. 421). After the apartment was secured, he was notified

8 Campbell had every reason to conceal the usual contents of the nightstand. While he argued at trial that one of the men -- probably the co-defendant -- used Campbell's apartment as a "drop" for the money and weapons without Campbell's knowledge, and thus -- at first blush -- would apparently have nothing to hide from a search, evidence elicited by co-defendant Tartt from Campbell's friend Robert Lewis showed that the men hid their ration of marijuana -- which they smoked -- in the nightstand. Thus, Campbell had motive to conceal the contents of the nightstand, and a legitimate personal reason not to give his unvarnished consent.

to enter the apartment. He entered the living room, saw no one except for four black men in an alcove, noticed a valise on a closet shelf opening onto the alcove, feared the presence of a shotgun in the valise, told the men to "step aside, please", seized and opened the valise, and found the currency (H.T. 421). Miele handed the valise to Special Agent Carbone.

Miele's testimony contrasts with that of Special Agent Vogt. Vogt, the first law enforcement man in the room, found three men in the room and secured them by requiring the men to stand on opposite walls of the living room (H.T. 74). It was while he was searching one of these men that he heard Miele discover the money, behind him, to his right (H.T. 101). Vogt's memory was clear because prior to that instant, he had been "the only one to take control of the living room because the other two people were taking care of Campbell" (H.T. 95).⁹

9 Judge Pierce's decision on the motion erroneously described the role Detective Miele played in the arrest. Judge Pierce found that Miele noticed the black airline bag while securing one of the three persons in the living room who were present when the police arrived. This was inaccurate. Miele testified on direct examination that there were four individuals in the living room, in the alcove (H.T. 421); two of these men were in the alcove itself, two in the corner of the alcove where it opened into the living room. When Miele asked the men to "step aside", he said that the four moved out of the alcove (H.T. 436). It was then that the valise was seized. There is no basis for the finding that Miele was searching one of the men anywhere in the record.

ARGUMENT

POINT ONE

THE COURT ERRED IN DENYING APPELLANT'S MOTION
TO SUPPRESS PHYSICAL EVIDENCE BASED UPON THE
LEGALITY OF THE SEARCH OF APPELLANT'S APART-
MENT AND SEIZURE OF EVIDENCE THEREFROM. _____

A. GENERAL STATEMENT

Generally, warrantless searches are per se unreasonable under the Fourth Amendment, subject only to well-delineated exceptions. Katz v. United States, 389 U.S. 355 (1967) (consent); Coolidge v. New Hampshire, 403 U.S. 443 (1971) (plain view); Warden v. Hayden, 387 U.S. 294 (1967); United States v. Monteill, 526 F.2d 1008 (2d Cir., 1975) (hot pursuit); Ker v. California, 374 U.S. 23 (1963) (exigent circumstances). The burden of proving the applicability of any or all of these exceptions falls upon the government by a preponderance of the evidence taken at a hearing. Bumpers v. North Carolina, 391 U.S. 543 (1968). The Court must weigh the totality of the circumstances, and the applicability of any of the exceptions -- especially that of consent -- is not to be lightly inferred. United States v. Como, 340 F.2d 891 (2d Cir. 1965); United States v. Viale, 312 F.2d 595 (2d Cir. 1963), cert. denied, 373 U.S. 903.

Appellant Campbell does not contest the admissibility of those articles of clothing seized in open view by arresting agents. Coolidge v. New Hampshire, supra.

The only items whose admissibility Campbell contests are the shotgun and shells taken from the locked nightstand in Campbell's bedroom and the money taken from a closed valise from a closet opening onto the alcove in Campbell's living room, the most critical physical evidence in the case.

B. THE AGENTS SHOULD HAVE SOUGHT
A SEARCH WARRANT

Probable cause to arrest the appellant was had at 11:30, when Hall made his first confession to Detective Stein of the New York City Police Department. This information was in the hands of the Federal Bureau of Investigation by early afternoon, about one o'clock, according to Agent Martinolich's testimony. The reason, according to Martinolich, why the arrests were not made earlier was because the agents were waiting for the development of surveillance photographs taken by bank cameras (H.T. 205). These photographs were not available before 4:45 - 5:00 o'clock (H.T. 206).

Judge Pierce, during the pre-trial hearing, noted that "that fellow who stopped to eat the fruit salad should have been downtown getting a warrant at 5 o'clock " (H.T. 213).

The government maintained during the pre-trial hearing on the motion to suppress that the doctrine of hot pursuit (Warden v. Hayden, supra) was applicable to the agents' conduct. Thus, when Judge Pierce asked "Where was the hot pursuit?" (H.T. 192), Mr. Iason responded that "that was in pursuing the information from Hall, to get it in more focus, corroborate it as they did, having the surveillance photographs developed" (H.T. 192-3). "And on the business of how busy they (the agents) were", the Court noted, "keep in mind . . . they had time for fruit salad and other lunch, and whatnot. It was a leisurely pace." (H.T. 202). "I am concerned", Judge Pierce continued, "that they could have sent down for the warrant "

The seven-hour hiatus between Hall's first confession and the actual arrest, then, can be seen as a rather leisurely -- albeit orderly -- pursuit, hardly one in which the agents became overheated in pursuit of the suspects.

C. THE SEIZURE OF THE WEAPONS AND MONEY
WERE NOT INCIDENT TO THE ARREST OF
CAMPBELL.

The Court below found the searches to have been incident to lawful arrests and to be valid, thus making the fruits admissible. This was error.

Rather, the shotgun and shells (taken from the locked nightstand) and the money (taken from the closed valise which had been seized from the shelf of a closet near the living room) were seized after a search and not as mere incident to the arrest. Two bullets taken from Campbell's jacket pocket were taken incident to arrest; the other items, however, were taken only after search and seizure as set out in the Statement of Facts, supra.

D. CAMPBELL DID NOT MAKE A VALID CONSENT
TO THE SEARCH OF HIS APARTMENT.

During the hearing, it became manifest that Campbell was illiterate. He was unable, in open Court, to identify an affidavit he had signed with the assistance of his attorney prior to the hearing, but thought it was an F.B.I. waiver of rights form. Campbell, being illiterate, should have been well advised as to the consequences of his action. Cf., Schneckloth v. Bustamonte,

412 U.S. 218 (1973). This is not a case where the consenting party was a college graduate. United States v. Miley, 513 F.2d 1191 (2d Cir. 1975).

Further, it was clear that the agents acted in disregard of Fourth Amendment requirements. Apparently, none of them even thought about a search for evidence and weapons once the arrest of Campbell was affected, demonstrating either a remarkable lack of interest in recovering stolen property or acquiring additional evidence or a lack of candor with the Court. Thus, Agent Higgins was able to testify that prior to the arrests there was discussion of a search for the individuals being sought, but that he could not recall any discussion of a search for evidence (H.T. 48).

Coupled with the testimony of Agent Martinolich, the case agent in charge of the case, the pattern of preparing to secure the consent of a party emerges. Martinolich testified that Bureau agents have consent-to-search forms, which were not used on April 4, 1977 (H.T. 242). Both he and Higgins were familiar with these forms (H.T. 243). Sometimes, where the agent lacks a form, he will take the time to write it out for the consenting party to sign (H.T. 243). The agents, Martinolich maintained, were fully

prepared to seek oral consent to search long before they ever went to Campbell's apartment (H.T. 260-5). And no one, during the afternoon hours when the agents were awaiting development of the photographs, was dispatched downtown to get a search warrant (H.T. 250) or even thought of doing so.

It is astonishing that these experienced law enforcement agents never even anticipated the possibility of an evidentiary search of Campbell's premises, which -- prior to arrest -- might have contained weapons or part of the \$19,000 bank loot, except by planning to secure the consent of a party in the apartment.

This kind of thinking rises to the level of disregard for Fourth Amendment rights about which Judge Friendly commented in United States v. Titus, 445 F.2d 577 (2d Cir., 1971), cert. denied, 404 U.S. 957.

It is clear that the government did not establish below that Campbell gave an unencumbered, valid, intelligent consent. Rather, he submitted to the overwhelming force of the armed agents who entered his apartment. It cannot be said that the brief words described by Special Agent Higgins gave license to search every nook of Campbell's apartment.

E. THE SEIZURE OF THE WEAPONS FROM THE
NIGHTSTAND WAS DUE TO A SUBMISSION
TO AUTHORITY BY APPELLANT.

After securing Campbell against the foyer wall of his apartment, Agent Higgins entered Campbell's apartment, found a white wool cap, and encountered the locked nightstand. He asked Campbell for the key; Campbell had no key. Campbell called out to Robert C. Jones, one of the three men held in the living room (Jones was not arrested) for the key, and Jones turned the key over to Mr. Higgins.

Judge Pierce found that Campbell consented to the search.

Campbell testified that the agents threatened to "shoot the lock off" (H.T. 615). Campbell's submission to the agents was real; at the moment of Higgins request, he was in handcuffs. He had little real choice but to allow the agents entry into the locked nightstand.

F. THE SEIZURE OF THE MONEY DOES NOT
FALL WITHIN THE AMBIT OF CHIMEL V.
CALIFORNIA.

Chimel v. California, 395 U.S. 752 (1958), cannot justify the search and seizure of the valise containing money from the closet, as described by Detective Miele. First, Chimel applied to a situation where a

defendant, being apprehended, was seated at a desk; the agent's opening the drawer of the desk was found lawful because of the defendant's proximity thereto.

The situation here is much different. First, the apartment was secured before Detective Miele even came into the place, by his own admission (H.T. 420-1). The apartment being secure had only one meaning: that the agents had eliminated any risk of danger to themselves and had completed the arrest.

It is undisputed that Campbell was under arrest at the time Miele found the money; and it is undisputed that Special Vogt had secured the three men in the living room before Miele entered. Miele himself acknowledged that Vogt had entered the living room before him (H.T. 430); and Vogt himself recalled that he was the only one to take control of the living room because the other two were busy with Campbell (H.T. 95). It was after the living room was secure that Vogt heard Miele (whom he described as "the major case detective") and Special Agent Carbone say "something" about the money (H.T. 100).

Appellant Campbell contends that the improbability of Miele's story as he told it, that he saw four black men in the alcove, does not meet the government's burden. Bumpers v. North Carolina, supra.

The apartment being safe and secure, and the man in question near the closet containing the valise not being Campbell, the rule of Chimel v. California cannot apply here. The men near the closet were not defendants or suspects either; they were chance participants in the event whose presence should not activate the Chimel rule.

CONCLUSION

It has been demonstrated that the decision of the District Court to admit into evidence the alleged bank loot and the shotgun and shells was in error. That these items weighed heavily in the jury's mind in their deliberations cannot be doubted, especially since the jury discounted the testimony of government witness Wallace Hall to acquit appellant Campbell of the crime of bank robbery. It was the physical evidence which constituted an overwhelming burden for the appellant to have overcome.

The appellant has demonstrated that the finding of the weapons was due to a submission to authority by an illiterate man, not the knowing, conscious waiver of constitutional rights the law envisions. Further, it has been shown that the circumstances of the seizure of the money show that its finding was the product of something more than the chance encounter originally described by Detective Miele. The agents went into Campbell's apartment without a warrant, and comment has already been made about what appears to have been their disregard for the Fourth Amendment.

WHEREFORE, it is respectfully requested that this Court set aside Campbell's conviction of the crime

of conspiracy, reverse the decision of the District Court regarding the admissibility of the weapon, shells, and money, and remand the matter to the District Court for appropriate proceedings.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,
:
Plaintiff-Appellee, Docket No. 77-1418
:
-v-
:
DAVID CAMPBELL and AFFIDAVIT OF SERVICE
Michael Tartt,
:
Defendants-Appellants. :
-----X

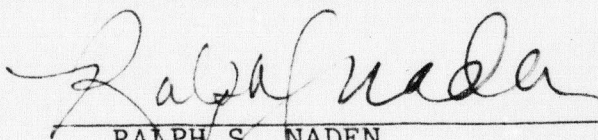
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

RALPH S. NADEN, being duly sworn, deposes and says

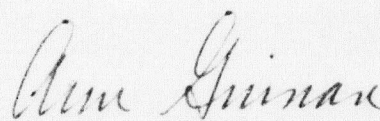
1. I am attorney for the defendant-appellant DAVID CAMPBELL herein, am over the age of 18 years, and am not a party to this action.

2. On this day, December 12, 1977, I personally served a copy of the within Brief on Appeal for appellant Campbell upon the offices of the United States Attorney for the Southern District of New York, located at One St. Andrew's Plaza thereof.

Dated: December 12, 1977


RALPH S. NADEN

Sworn to before me this
12th day of December, 1977.



Notary Public for the State of New York
Qualified in the County of New York
Commission Expires 1979

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney

certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation

shows: deponent is

the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

Check Applicable Box

☐ Individual Verification

the foregoing deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

being duly sworn, deposes and says: deponent is in the within action; deponent has read and knows the contents thereof; the same is true to

☐ Corporate Verification

the of a corporation, foregoing

in the within action; deponent has read the and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

is over 18 years of age and resides at

being duly sworn, deposes and says: deponent is not a party to the action,

☐ Affidavit of Service By Mail

On 19 deponent served the within upon attorney(s) for

in this action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ Affidavit of Personal Service

On 19 at deponent served the within upon

upon

herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on

19

.....
The name signed must be printed beneath

NOTICE OF ENTRY

Sir:—Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

RALPH S. NADEN

Attorney for

Office and Post Office Address

253 Broadway

Borough of Manhattan New York, N. Y. 10007

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

RALPH S. NADEN

Attorney for

Office and Post Office Address

253 Broadway

Borough of Manhattan New York, N. Y. 10007

To

Attorney(s) for

Index No. 77-1418

Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-v-

DAVID CAMPBELL and
Michael Tartt,

Defendants-Appellants.

AFFIDAVIT OF SERVICE

RALPH S. NADEN

Attorney for

Appellant CAMPBELL

Office and Post Office Address, Telephone

253 Broadway

Borough of Manhattan New York, N. Y. 10007

Tel. (212) 964-1998

To ROBERT B. FISKE, Jr.
UNITED STATES ATTORNEY
Attorney(s) for

Att'n: MR. IASON

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

